

EXPLANATORY MEMORANDUM TO
THE RENEWABLE HEAT INCENTIVE SCHEME (AMENDMENT) (NO. 2)
REGULATIONS 2022

2022 No. 1217

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Renewable Heat Incentive Scheme Regulations 2018 (2018 RHI Regulations), which provide the legislative framework for the non-domestic Renewable Heat Incentive (NDRHI). The Domestic Renewable Heat Incentive Scheme Regulations 2014, which established the Domestic Renewable Heat Incentive (DRHI), reference certain provisions in the 2018 RHI Regulations and will also be affected by the amendment.
- 2.2 This instrument corrects an error inserted into the 2018 Regulations by the Renewable Heat Incentive Scheme (Amendment) Regulations 2022 (2022 RHI Regulations). This error relates to the timing of a 12-month period during which certain requirements relating to the fuel quality criteria are suspended. This instrument provides that the 12-month period commences on the date that this instrument come into force.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument contains provisions which correct errors inserted into the 2018 RHI Regulations by the 2022 RHI Regulations. The Department will accordingly apply the free issue procedure.
- 3.2 This instrument will come into effect on the day after the day on which it is made. Accordingly, it does not comply with the 21-day rule set out at paragraph 2.11.1 of Statutory Instrument Practice (SIP). As required by paragraph 2.11.4 of SIP, this Explanatory Memorandum explains the rationale for not following the rule.
- 3.3 Regulation 6(b) of the 2022 RHI Regulations inserted a new paragraph 2A into Schedule 4A to the 2018 RHI Regulations. Paragraph 2A(a) purports to disapply certain fuel quality criteria for a “period of 12 months beginning with the day on which these Regulations come into force”. The intention had been for the 12-month period to commence on the date that the 2022 RHI Regulations came into force. The reference to “these Regulations”, which arguably refers to the 2018 RHI Regulations rather than the 2022 RHI Regulations, was a drafting error which, on one interpretation, renders the 12-month suspension period without effect (the relevant fuel quality criteria were not in force at the time the 2018 RHI Regulations came into force).

- 3.4 This instrument amends the drafting in paragraph 2A(a) so that the 12-month period commences on the date that the instrument comes into effect. The rationale for suspending the requirements is set out in detail in the explanatory memorandum to the 2022 RHI Regulations. In short, it is intended to increase the availability of RHI-eligible wood pellets in Great Britain, which will mitigate risks of energy shortages and higher prices of wood pellets.
- 3.5 The Department's communications in relation to the 2022 RHI Regulations, including the Explanatory Memorandum, make clear the intention to disapply the fuel quality criteria from 16th November, 2022. Accordingly, in the interests of legal certainty, the Department has needed to move quickly to remove any doubt about the effect of the 2022 RHI Regulations. The Department brought forward this instrument as soon as it became aware of the error.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 100 of the Energy Act 2008 enables the Secretary of State to make regulations establishing a scheme to encourage the renewable generation of heat and to provide for the administration of the scheme.
- 6.2 The RHI schemes aim to encourage the transition from fossil fuel-based forms of heating to renewable, low-carbon alternatives. They were designed to deliver carbon emissions reductions to help the UK meet its obligations under the Climate Change Act 2008 and the Carbon Budgets established under that Act. In addition, they aimed to help the UK meet its target under Directive 2009/28/EC (the "Renewable Energy Directive") that 15% of energy consumption was to come from renewable sources by 2020.
- 6.3 The domestic RHI scheme is set out in the Domestic Renewable Heat Incentive Scheme Regulations 2014 (S.I. 2014/928). It was open to renewable heat installations that supply heat to domestic properties.
- 6.4 The non-domestic RHI scheme is set out in the Renewable Heat Incentive Scheme Regulations 2018 (S.I. 2018/611). The scheme was open to producers of biomethane for injection into the gas grid and to renewable heat installations that generate heat for buildings and purposes other than heating a single domestic property. This included systems providing renewable heating to public buildings or commercial properties, for industrial or agricultural uses, or for heating a block of flats.
- 6.5 The non-domestic RHI scheme closed to new applicants at midnight on 31 March 2021. The domestic RHI scheme closed to new applicants at midnight on 31 March 2022.
- 6.6 The domestic and non-domestic regulations have previously been amended by the Renewable Heat Incentive Scheme Regulations 2018 (S.I. 2018/611), the Renewable

Heat Incentive Scheme and Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2019 (S.I. 2019/1052), the Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme (Amendment) Regulations 2021 (S.I. 2021/76) and the Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme (Amendment) Regulations 2022 (S.I. 2022/159).

7. Policy background

What is being done and why?

- 7.1 The Renewable Heat Incentive Scheme (Amendment) Regulations 2022 (S.I. 2022/1096) (the “2022 Regulations”) made various amendments to the 2018 Regulations. These included amending Schedule 4A to the 2018 Regulations to temporarily disapply for 12 months certain requirements relating to the fuel quality criteria.
- 7.2 Due to a drafting error in regulation 6(b) of the 2022 Regulations, the 12-month suspension period purported to commence on the date that the 2018 Regulations came into force (rather than, as had been intended, the date on which the 2022 Regulations came into force). These Regulations amend Schedule 4A to the 2018 Regulations so that the 12-month suspension period commences on the date that these Regulations come into force.
- 7.3 The amendment to Schedule 4A will also affect the Domestic Renewable Heat Incentive Scheme Regulations 2014 (S.I. 2014/928), as the definition of “approved sustainable fuel” in those Regulations references regulation 51 of the 2018 Regulations.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The Department does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 In accordance with section 100(7) of the Energy Act 2008, the Secretary of State has obtained the consent of the Scottish Ministers to the making of these Regulations.
Guidance
- 10.2 In accordance with section 148A(1) of the Government of Wales Act 2006, the Secretary of State has consulted the Welsh Ministers in relation to the making of these Regulations.
- 10.3 The impact on business, charities or voluntary bodies resulting from the changes made by the 2022 RHI Regulations was consulted on 22 August 2022. This consultation was targeted at the biomass industry who would be impacted by the banning of the importation of Russian pellets. The consultation and government response are available here: <https://www.gov.uk/government/consultations/renewable-heat-incentive-temporary-changes-to-wood-pellets-quality-requirement/outcome/government-response-to-informal-stakeholder-consultation>.

11. Guidance

- 11.1 The Authority is developing guidance to explain these regulations in further detail for stakeholders.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An impact assessment has not been produced to accompany this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses, and the consultation carried out in conjunction with the 2022 RHI Regulations obtained their views of the impact on their activities.

14. Monitoring & review

- 14.1 The Department is undertaking an evaluation of the reformed domestic and nondomestic RHI. Reports evaluating each scheme will be published following the closure of both schemes. The evaluation will assess the impact of the RHI and identify lessons for future policy development.
- 14.2 The instrument does not include a statutory review clause. The requirement under section 28(2) of the Small Business, Enterprise and Employment Act 2015 to make provision for review does not apply to this instrument as it falls within an exception in section 28(3) of that Act.

15. Contact

- 15.1 Tunde Ojetola (tunde.ojetola@beis.gov.uk) at the Department for Business, Energy and Industrial Strategy, can be contacted with any queries regarding the instrument.
- 15.2 Lowri Gilbert, Deputy Director for the Electrification, Products, Buildings & Delivery, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Callanan, Minister for Business, Energy and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.